In the second place, though this by itself might not be a conclusive reason, any other interpretation would have the effect not only of excluding the availability of the defence of duress but of excluding the availability of such defences as insanity and nonage which seems to me such an extreme departure from the ordinary principles of our criminal law that it is to be avoided if at all possible.

In any event, the wordings of the various sections comprised in the portions of the Penal Code in question, i.e. sections 76 to 106 seem to make it clear that although the chapter heading is "General Exceptions" the word "exception" is not to be read as synonymous with the word "excuse". I take for example section 76 :—

"Nothing is an offence which is done . . . . by reason of a mistake of fact . . . . . "

It does not say a mistake of fact is an excuse for committing an offence. It says that where there is a mistake of fact there is no offence and similarly with all the succeeding sections. They all begin with the words "Nothing is an offence."

For these reasons, then, I am not satisfied that the new sub-regulation excludes the availability of the various defences contained in those portions of the Penal Code which have been mentioned. Nor do I think there is anything in it which would justify me in not following the decision of the Court of Appeal in *Lim Ah Tong v. Public Prosecutor*[2] to the effect that all the general exceptions set out in those portions of the Code apply to offences under the Emergency Regulations.

Accordingly in the present case I hold that the defence of duress (and I say this without any prejudice whatsoever to the question of whether it is made out) is an available defence.

I propose to decide the case on that basis and I propose to invite the assistance of the Assessors on that basis.

MAQBOOL SINGH DHILLON v. PUBLIC PROSECUTOR

[A. Cr. J. (Buhagiar J.) February 27, 1956]

[K. L. — Criminal Appeal No. 89 of 1955]

Criminal Procedure Code (Cap. 6), ss. 167, 169 & 173(h) — Whether a subordinate Court is precluded by s. 173(h) from convicting of another offence under ss. 167 or 169 without specifically amending the charge.

In this case the accused was originally charged with an offence under s. 120B of the Penal Code. At the end of the prosecution case, the learned President came to the conclusion that there was a case to answer but after hearing the defence he thought that the facts disclosed an offence under s. 247(b) of the Land Code (Cap. 138) and therefore convicted accordingly; no fresh charge was formulated.

Held: where in a subordinate Court the President or Magistrate comes to the conclusion that the facts proved do not constitute the offence charged but constitute another offence, the Court is not precluded by s. 173(h) of the Criminal Procedure Code (Cap. 6) from convicting of another offence under ss. 167 or 169.

[**Editorial Note:** The judgment in this appeal disagrees with certain remarks of Spenser Wilkinson J. in **Lau Chan Chuah** v. R.[1]. The appellant applied for a Certificate under s. 34 of the Courts Ordinance, 1948, but it was refused on the grounds of there being several cases referred to in the Appeal Judgment which did not support the view taken in **Lau Chan Chuah's** case, and that since then, the point had been considered by the Singapore High Court in **Lew Cheok Hin** v. R. reported at p. 131, *supra*.]

Cases referred to :—

(1) *Lau Chan Chuah v. R.* (1955) M.L.J. 246.

(2) *Pretty v. Solly* 26 Bea. 606, 610.

(3) *Ramalingam Pillay v. R.* (1905), 9 S.S.L.R. 99.

(4) *Latip v. R.* (1941) M.L.J. 5.

(5) *Kundan Singh v. Public Prosecutor* (1939) M.L.J. 27.

MAGISTRATE'S CRIMINAL APPEAL.

S. D. K. Peddie for the appellant.

J. G. Adams (Federal Counsel) for the respondent.

Buhagiar J. : — This is an appeal against conviction of an offence under section 247(b) of the Land Code.

The appellant was originally charged with an offence punishable under section 120(b) of the Penal Code in that he agreed with others to do an illegal act namely to conceal from the proper registering authority a material fact to wit, the true consideration for the transfer of a plot of land and the said illegal act was done in pursuance of the agreement. At the end of the prosecution case the learned President held that there was a case to answer but at the end of the defence he came to the conclusion that the facts disclosed an offence under section 247(b) of the Land Code and convicted him accordingly; no fresh charge was formulated. The learned President relied on and applied the principle set out in *Mallal's* Criminal Procedure, 3rd edition at p. 192 :—

"A conviction upon a charge which was not expressly formulated is not improper where the facts which it was necessary to prove on the charge as framed and on which evidence was given are the same as the facts upon which the accused could be convicted of the substantive offence, provided that the accused is put to no disadvantage and would have had to adduce no further evidence."

The learned President was fully satisfied that the accused had been put to no disadvantage and would

have had to adduce no further evidence — in addition to that before the Court — to meet and rebut that charge.

The appeal was lodged on the following main grounds of appeal :

It was submitted that the conviction was bad for multiplicity in that the section 247(b) of the Land Code provides for a number of distinct alternative offences and not merely one offence. I did not consider that there was substance in this ground as it is abundantly clear from the judgment of the learned President that he convicted the appellant for having assisted in concealing from the registering authority a material fact, namely, the true consideration for the transfer.

Another ground of appeal was that the learned President was wrong in law in convicting the appellant under the said section since the consideration for the transfer was not a fact which was material to the proper registering authority. It was argued on behalf of the appellant that the consideration may be material for the purpose of stamp duty but the true consideration is not material for effecting a valid transfer; a transferee gets a good and indefeasible title independently of whether the true consideration has been disclosed or not. I fail to see how the consideration can be said not to be a material fact when the law requires it to be stated in the memorandum of transfer. Section 110 of the Land Code lays down that "when any land is intended to be transferred the transferor and transferee shall execute a memorandum of transfer in the Form in Schedule XX, ..." Schedule XX specifically lays down that the consideration should be stated. Under section 5 of the Interpretation and General Clauses Ordinance "every schedule to an Ordinance or Enactment shall, together with any note thereto, be construed and have effect as part of the Ordinance or Enactment."

Another ground of appeal was that the learned President erred in law in holding that it was not necessary to formulate a charge against the appellant before convicting by virtue of the fact that the procedure in this case was governed by the provisions of section 173 of the Criminal Procedure Code which make it mandatory for the Court to formulate a charge and to call upon the defendant to plead to such charge before conviction can be entered.

The learned Counsel for the appellant relied on *Lau Chan Chuah v. Regina*[1]. Judgment in this case was delivered on 10th October 1955 but did not appear in the reports until December and was therefore not before the learned President when he gave judgment on the 28th November, 1955. In that case Spenser Wilkinson J., held that section 177 of the Straits Settlements Criminal Procedure Code was not applicable to a Magistrate's Court and therefore it was not permissible for a Magistrate in a summary trial after hearing the defence to convict the accused upon a charge different to that which he was charged without specifically amending the charge, recharging the accused and giving him an opportunity to recall witnesses and to defend himself upon the new charge. The learned Judge held that section 177 of the Straits Settlements Criminal Procedure Code is an entirely general section and in view of the particular provisions relating to summary trials it is not applicable to a Magistrate's Court; he relied on the rule as to general and particular enactments in the same statute as laid down in *Pretty v. Solly*[2]. It does not appear from the report that the point was argued before the learned Judge and no reference seems to have been made to previous cases on the point. There are at least three cases which are relevant : *Ramalingam Pillay v. R.*[3]; *Latip bin Ahmad v. Rex*[4] and *Kundan Singh & Ors. v. Public Prosecutor*[5].

The first was a case where in a trial before a Magistrate, after the evidence had been fully heard on both sides the Magistrate altered the charge and it was argued on the appeal that under what is now section 182(h) Straits Settlements Criminal Procedure Code, the Magistrate had no power to alter the charge at that stage of the proceedings. In the course of his judgment Cox C.J. said :—

> "Section 177, subs. 5 (now Straits Settlements Criminal Procedure Code, s. 182(h) and F.M.S. Criminal Procedure Code s. 173(h)) must be read with the general s. 163 (now Straits Settlements Criminal Procedure Code s. 168 and F.M.S. Criminal Procedure Code s. 158) which gives power to any Court to alter any charge at any time before judgment is given, and in the case of trials before the Supreme Court, before the verdict of the jury is returned."

In *Latip bin Ahmad v. Rex*[4], one of the accused was charged before a Magistrate's Court under section 148 of the Penal Code (rioting armed with a deadly weapon) but was convicted under section 147 (simple rioting) without being charged therewith. On appeal counsel for the appellant relied on section 168 of the Straits Settlements Criminal Procedure Code which provides that any alteration in the charge should be read and explained to the accused. Terrell Ag. C.J. stated in his judgment :—

> "But it is clear that under s. 178 an accused person may be convicted of a minor offence of the same character without being charged. A person charged with

murder may be convicted of culpable homicide not amounting to murder, or of voluntarily causing grievous hurt, without being specifically charged. There is accordingly no substance in this objection".

The third case is *Kundan Singh & Ors. v. Public Prosecutor*[5]; where the appellants were charged before a Magistrate's Court with rioting under section 147 of the Penal Code but were convicted for causing hurt under section 323 of the Penal Code. Murray-Aynsley J. held that the conviction must be set aside, and that although hurt might be an element in a case of riot, it was not a "minor offence" within section 169 of the Criminal Procedure Code. It is clear from the judgment that in the opinion of the learned Judge section 169 of the Criminal Procedure Code applies to proceedings in the subordinate Courts and if the offence for which the appellants had been convicted were a "minor offence" within the meaning of that section the conviction would have been a good one although they had not been charged with that offence.

These cases show that the special provisions dealing with proceedings in summary trials before the subordinate Courts do not entirely overrule the general provisions dealing with the charge and with this view I agree. The relevant provisions in the F.M.S. Criminal Procedure Code is section 173(h). This provision and others appear under Chapter XIX dealing with summary trials in Subordinate Courts, and provides that at the end of the prosecution case the President or Magistrate is to amend the charge in the circumstances therein mentioned. No provision is contained in this Chapter as to what is to happen when after having heard the evidence on both sides the President or Magistrate comes to the conclusion that the facts proved do not constitute the offence with which the accused has been charged but constitute a minor offence. In my opinion the provisions contained in Chapter XVIII "Of the Charge" apply; there is no doubt that the provisions of this Chapter are general and apply both to the High Court and to the Subordinate Courts; the application of these provisions is in some cases limited by the provisions of Chapter XX but in so far as they are not so limited they apply to both the High Court and the Subordinate Courts. In the case of this appeal the learned President could not at the end of the case for the prosecution amend the charge as he found that there was a case to answer on the charge as formulated; at the end of the case for the defence therefore the learned President, correctly applied the general provisions under Chapter XVIII.

I, therefore, dismissed the appeal.

Appeal dismissed.

SUBRAMANIAM v. PUBLIC PROSECUTOR

[P. C. (Lord Radcliffe, Lord Tucker and Mr. L. M. D. de Silva) May 16, 1956]

[Privy Council Appeal No. 2 of 1956]

Emergency Regulations, 1951, reg. 4(1) & (2A) — Penal Code s. 94 — Interpretation — General exceptions — Defence of duress — Defence of "lawful excuse".

Evidence — Hearsay — Admissible to show that statement was made.

Privy Council — Jurisdiction — Criminal matter — Essential principle of justice infringed.

"Lawful excuse" in regulation 4 of the Emergency Regulations, 1951, covers a field of its own and sub-regulation (2A), although it restricts the scope of the defence of "lawful excuse", does not affect the scope of the defences afforded by the general exceptions appearing in the Penal Code.

Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made. The fact that the statement was made, quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made.

The jurisdiction exercised by the Judicial Committee in criminal cases is a very narrow one. The Judicial Committee will only interfere where there has been an infringement of the essential principles of justice. An obvious example would be a conviction following a trial where it could be seriously contended that there was a refusal to hear the case of the accused, or where the trial took place in his absence, or where he was not allowed to call relevant witnesses.

Case referred to:—

(1) *Muhammad Nawaz v. R.* L.R. 68 I.A. 128.

PRIVY COUNCIL APPEAL.

Dingle Foot, Q.C. (*R. K. Handon* with him) for the appellant.

D. A. Grant for the respondent.

The facts and arguments appear sufficiently from the judgment of their Lordships delivered by:—

Mr. L. M. D. de Silva: —This is an appeal by special leave from a judgment of the Supreme Court of the Federation of Malaya (Mathew C.J., Wilson and Abbott JJ.) dismissing an appeal against a conviction in the High Court of Johore Bahru (Storr J., sitting with two assessors) whereby the appellant was found guilty of being in possession on the 29th April, 1955, of 20 rounds of ammunition contrary to Regulation 4(1)(b) of the Emergency Regulations, 1951, and sentenced to death.

When the appeal to the Supreme Court came up for hearing counsel assigned to argue the case for the appellant said that there was nothing that he could